

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-41803-2018

Date of decision: April 04, 2019

Balwinder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. N.S. Dandiwal, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab.

Mr. Devinder Singh, Advocate
for complainant/respondent No.2.

RAJ SHEKHAR ATTRI, J.

Through the instant petition preferred under Section 438 of Code of Criminal Procedure, petitioner has sought anticipatory bail in case bearing FIR No.16 dated 25.08.2018, under Sections 406 and 498-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Women, District SAS Nagar, Mohali.

The FIR narrates the tale of a hapless wife, whose husband is residing illegally with a mistress, he not only physically and mentally tortured the complainant-wife but also failed to return her *istridhan* and other belongings.

Smt. Navneet Kaur (complainant) was married with the petitioner on 29.01.2001. Unfortunately, she should not conceive and thus, failed to deliver a child. In fact, later on, it was diagnosed that she was suffering from tuberculosis.

Petitioner started maltreating the complainant mentally and physically mainly on the ground that she is unable to conceive and

thereafter, he developed illicit relations with one, Manpreet Kaur, who is nonetheless but a cousin of his wife. Her husband started residing with said Manpreet Kaur on different address.

Even articles of dowry/*istridhan* has not been returned to her.

I have heard learned counsel for the parties and have gone through the record.

Earlier, the matter was referred to the Mediation and Conciliation Centre but it remained unsuccessful.

Learned State counsel has placed on record the list of articles and submitted that only three articles have been recovered and remaining articles are still in possession of the husband.

The instances of cruelty are of serious nature. Petitioner is not only having extra marital affairs but also beating and maltreating the complainant. She has produced the report of the police dated 14.08.2018 which transpires that petitioner is residing with said Manpreet Kaur.

Learned counsel for the complainant has also placed on record certain photographs of the marriage which transpires that costly jewellery were given to the petitioner as well as his family members. Photographs have also been placed on record showing the association of the petitioner with said Manpreet Kaur as both are seen dancing together.

The remedy of anticipatory bail is extraordinary one and should be used in exceptional cases. The Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*** **2011 AIR (SC) 312** issued the following parameters for grant of anticipatory bail :-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

Keeping in view the facts and circumstances of the case, this court is of the view that petitioner is not entitled to the concession of anticipatory bail.

Petition stands dismissed accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

April 04, 2019
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No